IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 671 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
DHOBI MAHESHBHAI PARSHOTTAMBHAI

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Appearance :
MR KC SHAH APP for Appellant
MR BHUNESH C RUPERA for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 05/07/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Sessions Judge, District Surendranagar, on 15th of December, 2004, in Sessions Case No. 38 of 2002, whereby the present respondent being accused of said Sessions Case came to be acquitted by the Trial Court for the offences punishable under Sections 498-A ans 306 of the Indian Penal Code.

2 Learned APP Mr. K.C. Shah for the State was heard and Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. Bhunesh C. Rupera waives for the respondent.

3 Both the learned Counsels for the parties requested this Court to hear the matter finally at this stage as the Record and Proceedings of the Trial Court is available and both of them assured assistance with extra copies of the evidence as well as documents produced on record. Request is granted. Learned APP Mr. K.C. Shah for the State and learned Advocate Mr. Bhunesh C. Rupera were heard in detail in respect of this Appeal and Appeal is finally heard.

4 According to the prosecution case, victim of the incident is Rakshaben, who was married to present respondent before 13 years of the incident, and out of this wedlock, Rakshaben had two sons. It is the allegation of the prosecution that the respondent was harassing Rakshaben for money and was demanding that Rakshaben should obtain amount from his brother, complainant Chauhan Mukeshbhai Popatbhai. Lastly, on 19th of January, 2002, Rakshaben had been to Baroda at the house of her brother from Surendranagar and she had returned on 24th of January, 2002. She was residing with her husband respondent at Surendranagar and her in-laws were residing separately. Rakshaben had informed Smitaben, wife of complainant Mukeshbhai, that the respondent was harassing her and even he demanded the amount and her brother was not paying such amount and, therefore, she was treated with cruelty by the respondent. According to her brother Mukeshbhai, he had given Rs. 5,000/- to respondent earlier. Thereafter also when respondent visited along with his assistant Mahebubbhai Dhudabhai and he had paid Rs. 15,000/- to respondent. Even then he was harassing his sister. According to Mukeshbhai, Rakshaben was sent by respondent to Baroda frequently to obtain money. Ultimately, Mukesh has decided to sell some valuables and to pay Rs. 40,000/- to respondent according to his demand and thereafter on 24th of January, 2002, after staying some days at Baroda, Rakshaben returned to

Surendranagar. In that period, she complained about the behaviour of respondent as to cruelty on account of not paying the amount by her brother. On 31st of January, 2002, on account of harassment and cruelty meted out to Rakshaben, she committed suicide by hanging herself and died. On 3rd of February, 2002 at 18.30 complaint came to be filed in this respect by brother of deceased Mukeshbhai P Chauhan before Vadhwan Police Station which was registered by PW-4 Mahendrasinh Bahadursinh Jadeja and the said complaint is produced on record at Exhibit-16 and crime was registered and investigation was handed over to A.S.I. Ghanshyamsinh Jitubha Rana. Before filing of this complaint, on 31st of January, 2002, about the accidental death of Rakshaben, an entry was recorded by AD No. 4 which is placed at Exhibit – 26. Accordingly, on account of skirmishes between the husband and wife for getting money, Rakshaben committed suicide and that inquiry was also conducted by Ghanshyamsinh Jitubha Rana. In said inquiry, he draw inquest panchnama and panchnama of scene of offence and recorded the statements of witnesses. When this inquiry was in process, above said First Information Report came to be recorded as crime and that investigation was entrusted to ASI Ghanshyamsinh Jitubha Rana. During investigation he recorded statements of witnesses, arrested the accused and submitted charge sheet in the Court of learned Judicial Magistrate, First Class. The case thereafter was committed to

the Court of Sessions and charge was framed against the present respondent vide Exhibit-6 on 22nd of April, 2004 for the above said offences, to which he pleaded not guilty by Exhibit – 7. Prosecution examined as many as six witnesses and produced on record necessary documentary evidence.

5 PW-1 Dr. Arjunkumar Mohanlal Parikh is examined at Exhibit – 9 and he conducted postmortem on dead body on 31st of January, 2002 as the dead body was brought to him along with inquest panchnama and police yadi. He completed postmortem at 8.30 a.m. Accordingly deceased had injuries on her neck on account of ligature mark, which he noted in column 17 of postmortem note at Exhibit – 11. According to Doctor, cause of death was asphyxia due to hanging. The death certificate is produced at Exhibit -12.

6 PW-2 Mukeshbhai Popatbhai is examined at Exhibit -15, but he did not support the prosecution case and stated that his sister Rakshaben never informed him that she was harassed by her husband. He had given a loan of Rs. 15,000/- to respondent for erecting a house. He was declared hostile and was confronted with his complaint which he gave before the police and placed at Exhibit – 16.

7 PW -3 Mahebubbhai Dhudabhai is examined at Exhibit – 17 to prove the fact that the complainant had given Rs. 15,000/- to the respondent in his presence but he has not supported the prosecution case and stated that in his presence no such transaction had taken place, in which the complainant might have given amount of Rs. 15,000/- or any amount to the respondent. He has been declared hostile but nothing is coming out from his evidence.

8 Inquest panchnama is placed at Exhibit - 18 and panchnama of scene of offence is placed at Exhibit - 19.

9 PW – 4 Mahendrasinh Bahadursinh Jadeja is examined at Exhibit – 22 and he recorded the complaint placed at Exhibit – 16. He produced on record copies of Station Diary at Exhibit – 23. According to him, as aforesaid, the investigation was entrusted to Ghanshyamsinh Jitubha Rana.

10 PW -5 Smitaben Maheshbhai is examined at Exhibit – 24 and she happens to be wife of complainant Mukeshbhai. According to her, lastly Rakshaben stayed at her house for 7 to 8 days and she complained that the respondent was executing cruelty upon her and was beating her and was demanding money. According to her, respondent

had demanded Rs. 15,000/- which amount was paid and thereafter he demanded Rs. 40,000/- which could not be paid by them. She had informed about this to her husband - complainant Mukeshbhai and on Rakshaben committed suicide and died, Mukeshbhai had filed a complaint. According to her, Rakshaben died because she was harassed physically and mentally by respondent on account of they could not pay Rs. 40,000/- to the respondent. In her cross-examination, she stated that the marriage tenure between Rakshaben and respondent was of 13 years. Rakshaben used to visit her house. During this 13 years, Rakshaben never had written any letter to them. On 2nd of March, 1994, Rakshaben had been to "Nari Kendra" at Surendranagar and had given an application, but she had no proof about this fact. She admitted that Rs. 15,000/- was paid to respondent by way of loan and it was required to be paid by the respondent back to them. That amount was paid back by the respondent and he demanded receipt, which they did not give. He demanded Rs. 40,000/- but they did not pay. Thereafter, defence alleged that Rakshaben committed suicide on account of emotional nature and this fact was denied by this witness.

11 PW-6 Ghanshyamsinh Jitubha Rana is examined at Exhibit – 25 and as aforesaid, he is the Investigating Officer.

12 This is all the evidence of the prosecution.

13 The learned APP Mr.K.C. Shah, on behalf of the State vehemently urged that at least one witness Smitaben- PW-5 Exhibit – 24 supported the prosecution case as regards the cruelty executed by the respondent on deceased Rakshaben though other witnesses have not supported. It is submitted that if the fact is proved by one witness, the prosecution is said to have established the case against the respondent. It is submitted that in this case also the evidence of Smitaben is sufficient to convict the accused respondent and the view taken by the Trial Court is erroneous and against the weightage of the evidence to acquit the accused and, therefore, the order of acquittal is required to be set aside and Appeal is required to be allowed and respondent accused is required to be convicted. While on the other hand, the learned Advocate Mr. Rupera for the respondent supported the prosecution case.

14 Now this being an acquittal appeal, it is necessary to see the reasons recorded by the Trial Court. The Trial Court came to the conclusion that it was proved that Rakshaben died on account of suicide and asphyxia due to hanging, but at the same time, it must be taken into consideration that the marriage lasted for 13 years, and during this

13 years, Rakshaben had two issues. The witnesses did not say that during this period, at any time, any cruelty or misbehaviour was meted out to Rakshaben by respondent. Even complainant Mukeshbhai stated before the Court that Rakshaben never complained about the behaviour of the respondent before him. Mukeshbhai did not support the prosecution case and no support is found by the prosecution from cross-examination of Mukeshbhai. Witness Mahebubbhai Dhudabhai also did not support the prosecution case. Smitaben, wife of the complainant Mukeshbhai, stated that before the incident the respondent was physically and mentally harassing Rakshaben and was demanding money. According to Smitaben, the accused – respondent had demanded Rs. 40,000/- but they had paid Rs. 15,000/- and on account of this, Rakshaben had to undergo mental as well as physical cruelty and ultimately it led to committing suicide by Rakshaben. In her cross-examination, Smitaben admitted that the amount of Rs. 15,000/- was advanced to respondent by them by way of loan and the said amount was returned by the respondent to them, but they refused to give receipt of the said Rs. 15,000/-. Except this Rs. 15,000/- no amount was given to the accused – respondent. Smitaben accepted that Rakshaben was emotional by nature and according to the Trial Court except Smitaben, none of the witnesses supported the prosecution case. According to the allegations against the respondent in complaint, respondent - husband

was pushing Rakshaben to her brother and parental home frequently for obtaining money and for that Rakshaben had to suffer mental as well as physical cruelty at the hands of the respondent, and that was the cause of the incident. According to Trial Court, there was no reliable evidence to prove these fact. According to Trial Court, the prosecution failed to give any cogent evidence on the aspect that when amount of Rs. 40,000/- was demanded by the respondent, when Rs. 15,000/- were paid and returned back. Even if it is proved that Rs. 15,000/- were handed over to the respondent, then as per the admitted case, it was by way of loan and it could not be believed that on account of this, Rakshaben had to suffer mental as well as physical cruelty by respondent. Except this incident, according to the Trial Court, nothing is coming in the evidence of prosecution that the respondent demanded amount from the brother of deceased Rakshaben. Therefore, the learned Trial Judge came to the conclusion that the prosecution failed to prove beyond doubt the case of cruelty meted out by the respondent against the deceased. No evidence could be led by the prosecution to come to the conclusion that there was no other alternative for the deceased except to commit suicide on account of cruelty as defined under Section 498(A) of the Indian Penal Code. The marriage span was of 13 years. The spouses had two issues and life was smooth between them and when there is, in fact, no clinching evidence of cruelty, the prosecution failed

to prove charges against the respondent - accused and, hence, Trial Court acquitted the accused.

15 Now this being Appeal against the acquittal, before proceeding further, it is the duty of this Court to address itself as to whether the reasons which weighed with the Trial Court for recording of the order of acquittal was proper or not. This can be done even with independent re-appraisal of the entire evidence. It must be noted that the mere fact that a view than the view taken by the Trial Court can be legitimately arrived at by the Appellate Court on re-appraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the Trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. It is the duty of this Court, first to seek an answer to the question whether the findings of Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable.

16 Having gone through the reasons given by the Trial Court, it clearly appears that the conclusions arrived at by the Trial Court is reasonable and from the evidence recorded during the trial, it is extremely probable conclusion from the circumstances disclosed by

the prosecution case. It could not be shown by the State that how the conclusion arrived at by the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. Except Smitaben all other witnesses have turned hostile, and the evidence of Smitaben, for the reasons recorded by the Trial Court, as aforesaid, fall short to prove the guilt of the respondent beyond doubt and, therefore, even if reasonably a second view may be possible from the evidence recorded, the order of acquittal cannot be set aside only on this fact unless the findings of the Trial Court are palpably wrong and unsustainable.

17 In view of above, we do not find that the reasoning given by the Trial Court for acquittal of the accused are wrong and unsustainable and even if the second view is possible, no interference is required in the judgment and order impugned in this Appeal. Therefore there is no reason for interference and to set aside the impugned judgment and order and, hence, the following oder :

"Appeal is dismissed. "

(J. R. VORA, J.)

(BANKIM.N. MEHTA, J.)

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